

**STATE OF VERMONT
PUBLIC SERVICE BOARD**

Joint Petition of Central Vermont Public)
Service Corporation, Danaus Vermont)
Corp., Gaz Métro Limited Partnership,)
Gaz Métro inc., Northern New England)
Energy Corporation for itself and as agent)
for Gaz Métro Limited Partnership's)
parents, Green Mountain Power)
Corporation and Vermont Low Income)
Trust for Electricity, Inc. for approval of:)
(1) the merger of Danaus into and with)
Central Vermont, (2) the acquisition by)
Northern New England of the common)
stock of Central Vermont, (3) the)
amendment to Central Vermont's Articles)
of Association, (4) the merger of Central)
Vermont into and with Green Mountain,)
and (5) the acquisition by VLITE of a)
controlling interest in Vermont Electric
Power Company, Inc.

Docket No. 7770

PROPOSED FINDINGS AND BRIEF

SUBMITTED BY

VERMONT PUBLIC POWER SUPPLY AUTHORITY

April 23, 2012

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This case concerns a Joint Petition filed with the Public Service Board ("PSB" or "Board") by Central Vermont Public Service Corporation ("CVPS"), Danaus Vermont Corp. ("Danaus"), Gaz Métro Limited Partnership, Gaz Métro inc., Northern New England Energy Corporation for itself and as agent for Gaz Métro Limited Partnership's parents, Green Mountain Power Corporation ("GMP") and Vermont Low Income Trust

for Electricity, Inc. ("VLITE"). The following are the limited proposed findings of fact and brief of Vermont Public Power Supply Authority ("VPPSA").

FINDINGS

Based upon the evidence of record, VPPSA offers the following findings.

DISTRIBUTION UTILITY CONCERNS

1. VPPSA and its members have benefitted from the presence of both CVPS and GMP relative to the procurement of services such as power supply, transmission services and distribution services. To the extent that the merger would reduce those benefits, it is important that any approval of the proposed acquisition and merger be subject to appropriate conditions. Mullett pf. at 3-4.
2. GMP supports the negotiation of an agreement between Hyde Park and CVPS to address the termination of the so-called 3-Phase Agreement between them. Mullett pf. at 5; Otley Rebuttal pf. at 2.
3. VPPSA members have a variety of agreements, understandings and procedures with GMP and CVPS such as development and updating distribution standards and emergency backup agreements, a system maintenance agreement with Northfield and statewide collaborative processes, all of which GMP has agreed should remain in place following the Merger. Mullett pf. at 5-6; Otley Rebuttal pf. at 2.

4. The acquisition of CVPS by Danaus and the subsequent merger of CVPS and GMP (the "Merger") will not affect GMP's ownership or operation of, or have any other impact on, the McNeil Generating Station. Mullett pf. at 6
5. The Highgate Joint Ownership Agreement should be amended to require three (3) owners representing a majority of ownership shares for approval of all major decisions, and GMP has agreed to support such amendments. Mullett pf. at 6; Nolan pf. at 5; Otley Rebuttal pf. at 2.
6. Vermont Electric Cooperative, Inc. ("VEC") is negotiating with GMP for itself and on behalf of the Village of Johnson Water & Light Department and the Village of Hyde Park Electric Department for an acceptable model for the ownership and operation of certain transmission facilities. Wright pf. at 2-6; Exhibit VEC-JMW-1.

VELCO GOVERNANCE

7. There are significant risks and disadvantages to having one Vermont distribution utility effectively controlling Vermont Electric Power Company, Inc. ("VELCO"). Mullett pf. at 7.
8. VELCO is a private, for-profit, Vermont business corporation governed by the provisions of Title 11A, Vermont Statutes Annotated. Mullett pf. at 7.
9. The PSB should condition any approval of the Merger on a requirement that GMP (1) not hold a majority of VELCO Board seats; (2) not be able to vote a

majority of VELCO shares; and (3) agree to "super majority" provisions for termination of VELCO as a manager of VT TRANSCO LLC ("TRANSCO") or for substantive amendments to VELCO's role as manager of TRANSCO. Mullett pf. at 7.

10. Petitioners have agreed that CVPS should divest itself of 38% of VELCO Class B voting common stock to VLITE before the Merger. Petitioners-DPS-1 at ¶ 7
11. GMP has agreed to limit to four (4) the number of VELCO Board members it will nominate for election to the VELCO Board of Directors. Petitioners-DPS-1 at ¶ 11.
12. Petitioners have agreed to take all actions necessary to assure that none of them individually or collectively can unilaterally remove VELCO as managing member of TRANSCO or eliminate or amend Section 9.3 of the TRANSCO Agreement. Petitioners-DPS-1 at ¶ 13.
13. Petitioners affirmed that they do not intend to obtain a majority position in VELCO governance now or in the future, and that neither GMP nor CVPS will increase its ownership share of VELCO without PSB approval. Petitioners-DPS-1 at ¶ 14.

BRIEF

Introduction

As set forth in the testimony of VPPSA's witness, VPPSA does not offer an opinion on whether the acquisition and merger should or should not be approved. Rather, VPPSA has attempted to identify certain conditions that should be imposed if the Vermont Public Service Board (the "PSB" or "Board") determines that such approval is warranted.

VPPSA identified a number of concerns and successfully negotiated agreements with GMP for their resolution (See proposed VPPSA findings 2-5).

The remaining issue of concern addressed in VPPSA's (and most other parties') testimony is the so-called "VELCO Governance" issue. Below, VPPSA sets forth the issue and its proposal for how the Board should resolve it.

The Issue and the Status of the Resolution

As explained in the testimonies of Mary Powell, Lawrence J. Reilly and Christopher Dutton, VELCO has existed and operated for over 50 years as a private, for-profit, Vermont business corporation. The Vermont distribution utilities are the shareholders, owning roughly the same percentage of shares as their individual loads bear to the total Vermont state load. At the time the Petition was filed, those allocations were:

CVPS: 48.5%

GMP: 29.5%

BED: approximately 6%

VPPSA, WEC and Stowe: approximately 8%

VEC: approximately 8%

Powell & Reilly pf. at 20-21

It is important to keep in mind that these percentages represent actual investments made with ratepayer dollars and an historic revenue stream (through dividends) that directly benefits those ratepayers.

The Petitioners recognized that absent corrective action, the proposed acquisition and merger would result in GMP owning approximately 78% of VELCO stock. Pursuant to Vermont's Uniform Business Corporation law (11A VSA § 7.28) this would allow GMP to elect all of the VELCO directors.. This would amount to total control of VELCO, because Vermont law provides: "All corporate powers shall be exercised by or under the authority of, and the business and officers of the corporation managed under the direction of, its board of directors" (11A VSA § 8.01(b)). The two dominant shareholders have historically allowed for representation on the VELCO Board by public power and independent directors. One can imagine that this happy circumstance evolved because neither CVPS nor GMP had a majority of voting shares, thus requiring negotiations and compromise. Such would not be the case post-merger.

The Petitioners proposed a solution that addressed and resolved the "VELCO Governance" issue. During the hearings, furthermore, the DPS entered into a Memorandum of Understanding, Exhibit Petitioners-DPS-1 ("MOU"), with Petitioners that, inter alia, revised Petitioners' proposals on VELCO Governance. The MOU

contemplates further details being addressed and additional agreements being reached with the VELCO owners (MOU ¶¶ 10, 12, 13).

The Opportunity to Improve VELCO Governance

The fundamental danger of single company dominance of VELCO has been resolved. Indeed, it would have been resolved by the Petitioners' original proposal to create VLITE and transfer sufficient voting shares to it to ensure that GMP does not have more than 50% of voting common shares. But many parties, including VELCO itself, have recognized that the circumstances of this docket have allowed an opportunity to improve VELCO corporate governance through the introduction of corporate best practices instituted through the execution of a Shareholder's Agreement. VELCO's witnesses, Dutton and Brownell, set forth a number of issues, recommendations and warnings regarding the selection, election and functioning of a board of directors of this important private, for-profit business corporation. Vermont law provides for very broad discretion for shareholders to enter into agreements regarding all manner of corporate governance (11A VSA §7.32). It is through this mechanism that the owners of VELCO (including per the MOU, the DPS as stand-in for VLITE until VLITE is created and becomes owner of VELCO stock) should be allowed and encouraged to resolve any remaining VELCO corporate governance issues. These parties have reached agreement on a Shareholders' Agreement, subject to approval and execution by the VELCO

Shareholders (the "Shareholders' Agreement"). The signatories expect to file an executed copy of the Shareholders' Agreement by the due date for reply briefs.

Board Jurisdiction Regarding VELCO Management Issues.

The parties will file the Shareholders' Agreement as evidence that the VELCO governance issue has been resolved, but will not seek and do not require Board approval of it. It has long been the law in Vermont that while the PSB has broad discretion and authority to deal with those areas for which it has been given express authority, it is not a court of general jurisdiction (See *Trybuliski v. Bellows Falls Hydro-Electric Corp* (1941) 102 Vt 6, 20 A2d 117; *Carpenter v. Home Telephone* (1960) 122 Vt 40, 163 A2d 838; *North v. City of Burlington* (1965) 125 Vt 240, 216 A2d 82; *Westover v. Village of Barton* (1988) 149 Vt 556, 543 A2d 838). VPPSA submits that the details of VELCO's internal corporate governance, controlled not by Title 30 but by Title 11A are outside of the Boards expertise and jurisdiction and that there is no precedent or need for the Board to intrude itself into corporate management decisions. The PSB has ample authority to condition any acquisition and merger approval on the Petitioners demonstrating to the Board's satisfaction that the VELCO dominance issue has been resolved (see Mullett pf. at 6-7).

The MOU is largely silent on qualifications for VELCO directors and how the Petitioners will obtain a waiver of the other VELCO shareholders' rights of first refusal, which are required to allow the transfer of stock to VLLTE (see VELCO Bylaws, Article

VII, Section 2) and that is appropriate. The owners of VELCO, under the relevant sections of Title 11A have the authority to resolve all remaining issues and to do so in a way that is legal, binding and consistent with corporate governance best practices.

By the same token there is no need (or authority) to require amendment to any specific VELCO governance documents. Title 11A contains the recognition that Vermont business corporations engaging in businesses subject to regulation under a statute other the Title 11A are subject to the limitations in those other statutes (11A §3.01). The duties of directors in exercising their fiduciary obligations to the corporation and its shareholders are set forth in 11A §8.30. Interestingly, the Vermont legislature limited a director's discretion to consider stakeholder interests, the economy of the state or nation and other societal considerations to only directors of publicly traded companies. Directors of companies like VELCO whose stock is not registered under federal securities laws are bound by statute to exercise their fiduciary obligations in the traditional manner of good faith and prudent decisions reasonably believed to be in the best interest of the corporation (11A § 8.30(a)(1)(2)(3)). The PSB has no authority or need to involve itself in internal corporation governance details of VELCO or its shareholders.

CONCLUSION

The Petitioners in PSB Docket No. 7770 identified a legitimate area of concern for the PSB to address in determining whether under 30 V.S.A. § 311 specifically or under

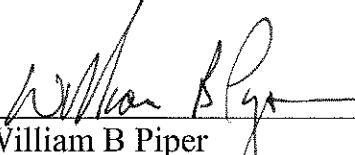
§§ 104, 107 and 109 generally, the proposed acquisition and merger can be found to not result in obstructing or preventing competition and will promote the general good of the State of Vermont. That area of concern - the potential monopoly control of VELCO – has been resolved. There remained a number of details to be worked out by VELCO shareholders to implement the undertakings in paragraphs 7 – 14 of the MOU and the VELCO shareholders and the DPS, with their disparate views and rights, have worked out those details to ensure not only that GMP be foreclosed from controlling VELCO (and through VELCO's management of TRANSCO, the Vermont transmission system), but also to address long-standing corporate governance issues. This has been done in a manner fully consistent with Vermont corporate law.

The MOU, for the first time in VELCO history, creates shareholders with no financial stake in the company, no statutory obligation to serve, and without Vermont-specific electric utility experience or expertise. These are potential risks, or are perceived as such, by VELCO shareholders. It is critical to a smooth transition to this new paradigm that VELCO shareholders, acting together, agree on principles to ensure continued excellence in VELCO corporate governance, protection of the hundreds of millions of invested dollars, and preservation and enhancement of a reliable high voltage transmission system. The Shareholders' Agreement represents an important step in the transition.

DATED at St. Johnsbury, Vermont, this 23rd day of April, 2012.

VERMONT PUBLIC POWER SUPPLY AUTHORITY

By: Primmer Piper Eggleston & Cramer PC



William B Piper
421 Summer Street, PO Box 149
St. Johnsbury, VT 05819
802-748-5061
wpiper@primmer.com